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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,290	10/18/2001	Stephen John Lewis	010327-003600US	4486
20350 7590 06/21/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER HOM, SHICK C	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 06/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/045,290	<b>Applicant(s)</b> LEWIS ET AL.	
	<b>Examiner</b> Shick C. Hom	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-36, 39 is/are allowed.
- 6) ☒ Claim(s) 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 5/30/07 have been fully considered but they are not persuasive.

In response to applicant's argument in page 14 lines 7-14 of the remarks that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that information about an insertion request is retrieved from a data source before it is sent out to an insertion device) is not clearly recited in rejected claim 37. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, Kawai et al. in Fig. 21 shows information being retrieved from a source about the request, i.e. blocks 21-2 and 21-3, before the issue of the request, i.e. block 21-7, and the abstract which describe securing the bandwidth information and service quality of the user before issuing the cell insertion request clearly reads on information about an insertion request being retrieved from a data source before it is sent out to an insertion device as argued.

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***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kawarai et al. (6,687,225) in view of Novick et al. (6,404,737).

Kawarai et al. disclose a device of inserting empty memory slots into a data flow (the abstract recite the cell insertion block for inserting an empty cell in a user cell stream), the device comprising:

logic configured to receive an insertion request for an empty memory slot to be inserted into the data flow (col. 2 lines 42-55 recite means for sending an empty cell insertion request to the shaping block which receives the request);

logic configured to retrieve information for processing the insertion request from a data source (col. 2 lines 55-58 recite that when the insertion request is sent, the quality of service class is reported, i.e. retrieve, and the shaping block inserts the empty cell based on the reported quality of service class and col. 19 lines 7-23 recite determining the timing for empty cell insertion being based on the scheduling counters of the QoS classes); and

logic configured to send an instruction for performing the insertion request to an insertion device configured to insert the empty memory slot into the data flow, wherein the insertion

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of the empty memory slot into the data flow is performed before shaping of the data flow (col. 2 lines 33-41 recite the buffer for accumulating the received user cells and empty cell being inserted at the read out of the buffer; and Fig. 27 shows the insertion of the empty memory cell in data stream 27-30 before shaping 27-22).

Kawarai et al. disclose all the subject matter of the claimed invention with the exception of logic configured to determine an appropriate insertion scheme for carrying out the insertion request in accordance with the information retrieved, wherein the appropriate insertion scheme includes a first insertion scheme configured to send the insertion request using predetermined shaping parameters, wherein connection identification is associated with predetermined shaping parameters and a second insertion scheme configured to send the insertion request using an unshaped connection identification.

Novick et al. from the same or similar fields of endeavor teach that it is known to provide logic configured to determine an appropriate insertion scheme for carrying out the insertion request in accordance with the information retrieved, wherein the appropriate insertion scheme includes a first insertion scheme configured to send the insertion request using predetermined shaping parameters, wherein connection

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identification is associated with predetermined shaping parameters and a second insertion scheme configured to send the insertion request using an unshaped connection identification (col. 3 line 65 to col. 4 line 41 recite the method of managing shaped and unshaped traffic in a single virtual path VP using two-stage shaping and two-priority queuing whereby shaped cells are stored and dequeued via a high priority queue and unshaped cells stored and dequeued via a low priority queue according to the VP contract clearly reads on using first indicator and second indicator of cell being shaped and unshaped, respectively, i.e. the high priority contract indicator corresponding to cell being shaped and the low priority contract indicator corresponding to the cell being unshaped).

Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide logic configured to determine an appropriate insertion scheme for carrying out the insertion request in accordance with the information retrieved, wherein the appropriate insertion scheme includes a first insertion scheme configured to send the insertion request using predetermined shaping parameters, wherein connection identification is associated with predetermined shaping parameters and a second insertion scheme configured to send the insertion request using an unshaped

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connection identification as taught by Novick et al. in the device of inserting empty memory slots into a data flow of Kawarai et al.

The logic configured to determine an appropriate insertion scheme for carrying out the insertion request in accordance with the information retrieved, wherein the appropriate insertion scheme includes a first insertion scheme configured to send the insertion request using predetermined shaping parameters, wherein connection identification is associated with predetermined shaping parameters and a second insertion scheme configured to send the insertion request using an unshaped connection identification can be implemented by providing the unshaped transmission option of Novick et al. to the device of inserting empty memory slots into a data flow of Kawarai et al.

The motivation for providing the appropriate insertion scheme includes a first insertion scheme configured to send the insertion request using a first indicator that the empty memory cell should be shaped using predetermined shaping parameters and a second insertion scheme configured to send the insertion request using a second indicator that the empty memory cell should be unshaped as taught by Novick et al. in the device of inserting empty memory slots into a data flow of Kawarai et al. being that it provides more efficiency for the system since the



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system can transmit both shaped and unshaped traffic using a single path.

***Allowable Subject Matter***

4. Claims 1-36 and 39 are allowed.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dulong discloses memory transfer apparatus and method useful within a pattern recognition system.

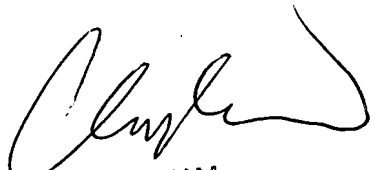
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pham Chi can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SH SH

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER

6/18/07